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December 16, 2016

FILE NO: 99997.032244

**VIA ECF AND ELECTRONIC MAIL**

Honorable Stuart M. Bernstein  
United States Bankruptcy Court  
for the Southern District of New York  
One Bowling Green  
New York, New York 10004-1408

Re: Pre-Motion Request Pursuant to L.R. 7007-1(b) Regarding Expert Discovery  
Picard v. Edward A. Zraick Jr., et al. (Adv. Pro. No. 10-05257)

Dear Judge Bernstein:

This firm is counsel to Edward A. Zraick, Jr., Nancy Zraick, Patricia DeLuca, and Karen M. Rich (collectively, the "Defendants") in connection with the above-referenced adversary proceeding commenced by Irving H. Picard, as Trustee (the "Trustee") for the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"). We write to request a conference with the Court pursuant to Local Bankruptcy Rule 7007-1(b) with respect to Defendants' proposed (a) motion to extend the deadline for disclosure of rebuttal witnesses; and (b) motion *in limine* to limit the proposed testimony of Lisa M. Collura and Matthew B. Greenblatt.

Defendants are individuals against whom the Trustee has alleged fraudulent transfer liability of \$285,000. The Trustee recently served Defendants, on the November 16, 2016 deadline, with four expert reports consisting of: (a) two expert reports of Matthew B. Greenblatt regarding the principal balance calculation; (b) one expert report of Lisa M. Collura regarding alleged transfers to the Defendants; and (c) a 1135-page expert report of Bruce G. Dubinsky regarding various issues.

The current deadline for disclosure of rebuttal experts is December 16, 2016. The discovery schedule may be extended "upon a showing of good cause." Avoidance Procedures at § 4.F [Adv. Pro. 08-01789, ECF No. 3141]; *see also* Fed. R. Civ. P. 16(b)(4) (incorporated by Fed. R. Bankr. P. 7016).



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Good cause exists to extend the deadline for Defendants to disclose rebuttal experts for at least two reasons. First, Defendants are in the process of reviewing the Trustee's expert reports and coordinating with counsel for similarly-situated defendants regarding the potential joint retention of one or more rebuttal experts. Defendants should be afforded sufficient time to engage in this process because retention of a rebuttal expert on their own is not practical given the amount at issue in this adversary proceeding.

Second, Defendants intend to file a motion *in limine* seeking to limit the proposed testimony of Lisa M. Collura and Matthew B. Greenblatt. The reports of Ms. Collura and Mr. Greenblatt rely substantially on BLMIS documents that constitute inadmissible hearsay. Further, these BLMIS documents do not constitute evidence of a type that may be reasonably relied upon as required under Fed. R. Evid. 703. Defendants submit that they should not be required to bear the expense associated with retention of rebuttal witnesses until after their motion *in limine* is decided.

This is Defendants' first request to extend an expert discovery deadline. Defendants have a pending request for conference regarding an extension of certain limited fact discovery (*see* ECF No. 60).

The undersigned has made the foregoing requests to Trustee's counsel on December 14, 2016. Trustee's counsel has not yet replied as of this writing. Pursuant to Local Bankruptcy Rule 7007-1(b), Defendants respectfully request a conference with the Court.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robert A. Rich".

Robert A. Rich

cc: Maximillian S. Shifrin, Esq. (BakerHostetler)  
(via ECF and Electronic Mail)